

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KPM ANALYTICS NORTH AMERICA
CORPORATION,

Plaintiff,

v.

BLUE SUN SCIENTIFIC, LLC, et al.,

Defendants.

Civil Action No.
4:21-cv-10572-MRG

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

MOTION

Tuesday, February 14, 2023
1:07 p.m.

John J. Moakley United States Courthouse
Via Videoconference
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
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P R O C E E D I N G S

(In open court.)

THE COURTROOM CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is Tuesday, February 14, 2023, and we are on the record in civil case number 21-10572, KPM Analytics North America, Corporation, versus Blue Sun Scientific, LLC, et al.

And would counsel please identify themselves for the record.

MR. GUTKOSKI: This is John Gutkoski, from Sunstein, LLP. I'm here representing the plaintiff, KPM.

With me are colleagues from co-counsel Morse, Scott Magee and Paige Zacharakis.

MR. RITCHIE: And I'm George Ritchie, from Gordon Feinblatt, LLC, here on behalf of defendants Innovative Technologies Group and Blue Sun Scientific, LLC.

MR. WILSON: Good afternoon, Your Honor, Dallin Wilson, on behalf of what we refer to as the individual defendants, Arnold Eilert, Robert Gajewski, Rachael Glenister, and Irvin Lucas.

And with me today is Will Prickett from our office, as well.

THE DEPUTY CLERK: Judge, we can't hear you.

THE COURT: Can you hear me now? Okay. Sorry

1 about that --

2 THE DEPUTY CLERK: Judge, sorry, you're cutting
3 out.

4 THE COURT: Hold on.

5 Can you hear me now, Rachel?

6 Sorry about that. You think this far into the
7 pandemic, these problems would be over.

8 Okay. So we'll here for both motions, the motion
9 to dissolve, and the motion for summary judgment by one of
10 the defendants.

11 I'll hear you -- I've read all the papers. You
12 don't waive anything by not raising it, because it's all in
13 the papers. So I'll hear the movants first.

14 MR. WILSON: Your Honor, would you like to hear the
15 motion to dissolve first or the motion for summary judgment
16 first?

17 THE COURT: It is -- I view them as somewhat
18 related, so -- although not completely. I suppose summary
19 judgment first, because that would end -- that would moot the
20 other motion.

21 MR. RITCHIE: Good afternoon, Your Honor, George
22 Ritchie, on behalf of Innovative Technologies Group. I'll be
23 arguing the motion for summary judgment with respect to that
24 defendant.

25 I'm going to call Innovative Technologies Group

1 "ITG" for short. And so the Court is aware, I may refer to
2 plaintiff or KPM Analytics, which is the plaintiff in this
3 case, as we go through it.

4 There are, by my count, Your Honor, six remaining
5 counts against ITG. Counts 1 and 2 are what I would call the
6 trade secret counts, which the Defendant the Trade Secrets Act,
7 the federal Trade Secrets Act, as well as the Massachusetts
8 equivalent.

9 THE COURT: Maybe I should cut to the chase. It
10 seems like the issue on the motion for summary judgment comes
11 down to two questions, though you could correct me if you
12 think there are other issues. One is whether or not
13 plaintiff has sufficient evidence to establish that ITG knew
14 about the alleged misappropriation of the trade secrets; and
15 second, whether it's possible for them to proceed on some
16 sort of piercing the veil or vicarious liability theory.

17 MR. RITCHIE: Thank you, Your Honor. I'll get to
18 it, because I appreciate the Court's questions. But I agree
19 to those questions; however, I think I would add a second
20 element, a sort of 1(a) and 1(b) to Your Honor's first
21 question.

22 I do think that it's important for the Court to
23 understand that there is no proof in this case that ITG knew
24 of any misappropriation or use by the individual defendants
25 or Blue Sun of the alleged trade secrets in this case. And

1 although KPM spent a lot of time trying to kick up a cloud of
2 dust around that issue, the simple fact that Robert Wilt, who
3 was the president of ITG, testified by that dispute -- that
4 he was not aware of the trade secrets had been taken by these
5 defendants when they were hired by ITG. He was not aware
6 that there were any trade secrets being used by these
7 defendants or Blue Sun when they began selling the machines.
8 And they weren't aware that there were any contacts between
9 KPM and these plaintiffs that contained confidentiality
10 clauses.

11 So that's the testimony, and there really isn't any
12 dispute about that. There's no document that would suggest
13 otherwise. There's no other witness who's come forward to
14 say, "No, that's not true. Mr. Wilt, in fact, did know these
15 things." No one has said that. So I think that, to some
16 extent, that answers the Court's question.

17 There are some inferences, that KPM would ask this
18 Court to draw, which we don't think are warranted here. And
19 I think the biggest of those is, in KPM's papers, KPM points
20 to a period of time during which Irvin Lucas, who is the
21 president of Blue Sun, agreed with Mr. Wilt to form Blue Sun.
22 This is in late 2018. And KPM points out, well, Mr. Lukas
23 was actually still employed by KPM at that time, and,
24 therefore, it would stand to reason that Mr. Wilt would have
25 known that there was a contract relating to confidentiality.

1 Well, I don't think that's true. And, in fact, as
2 the papers made clear, although Blue Sun is formed in 2018,
3 it really didn't begin doing business until 2019. The mere
4 fact that Mr. Lucas was employed by KPM at that period of
5 time in 2018 -- as long as he had a contract, there was no
6 reason to believe that. But more importantly, it's not just
7 the knowledge of the contract that's important. It's also
8 the knowledge as to whether he was breaching that contract.

9 So now I've moved into the tortious interference
10 with contract claim. But let me talk about that. Because
11 that claim requires not only a knowledge of the contract, but
12 that the defendant itself -- and the defendant here is ITG,
13 not Blue Sun. But that defendant took some action to
14 actively interfere with that contract.

15 Well, you know, again, we've said that ITG was not
16 aware of that contract. Mr. Wilt has said so.

17 There's also no evidence that Mr. Wilt or ITG did
18 anything to actively interfere with that contract about which
19 it had no knowledge.

20 You know, there have been allegations made against
21 Blue Sun as to what Blue Sun did or did not do with the
22 knowledge of that contract. But that's a separate issue from
23 ITG, and it would require this Court to find, I think, that
24 in order to allow this case to go to a jury, some active
25 participation or action taken by ITG itself to induce

1 Mr. Lucas to breach that contract and to have the knowledge
2 that he, in fact, was breaching that contract when he came
3 over to ITG. And that simply isn't there.

4 There is a lot of other arguments in KPM's papers
5 relating to the downstream benefits that ITG did or did not
6 received from the alleged misappropriation of trade secrets
7 and the alleged interference with contract. But those
8 downstream benefits don't, in and of themselves, establish
9 liability. None of the cases that KPM has cited in its
10 papers, nor any that we find, where a party which has not
11 disclosed the trade secret, utilized the trade secret, or
12 interfered with a contract, that those benefits expose them
13 to liability for actions taken by other defendants.

14 And I want to draw the Court's attention, if I
15 could, to several cases that KPM relies upon in its papers.
16 These are the *Data General* case, another case by the name of
17 *Curtiss-Wright*. And these cases, I think, what KPM has done
18 here is kind of creatively read these cases in a way that
19 favors their position.

20 So for instance, KPM takes the position that if a
21 party knowingly is aware of a disclosure or use of a trade
22 secret, it is, therefore, liable under the federal Trade
23 Secrets Act or the Massachusetts law. But, in fact, that's
24 actually not what those cases say, and I want to read to the
25 Court section -- or statement of torts 757, which comes right

1 out of *Curtiss-Wright* and *Data General*. And that's the
2 section upon which those courts rely for for its rulings in
3 the case.

4 That restatement section says, "One who discloses
5 or uses another trade secret, without privilege to do so, is
6 liable to the other, if he learned the secret from a third
7 person, with notice of the facts that it was secret, and the
8 third person discovered it by improper means or that the
9 third person's disclosure was otherwise a breach."

10 And what KPM tries to do in its papers is to say,
11 "Well, if you knew -- if you knew of something, then, you
12 know, you're, therefore, liable." Well, we dispute that we
13 knew anything about this. And "we," I mean ITG, knew that
14 these were trade secrets.

15 But there's a second requirement that KPM does not
16 focus in on, which is that that restatement of torts section
17 only applies to a party who uses or discloses another trade
18 secret. And there's no evidence that ITG used or disclosed
19 the trade secret in this case.

20 *Data General*, *Curtiss-Wright* -- there have a
21 different fact pattern. In those cases, there was a
22 corporate defendant, who had hired the departing employee,
23 the employee, himself, and then the plaintiff. There was no
24 other defendant, another corporation, like there is here with
25 ITG, whether it's some vague connection or vague allegation

1 that this other party was benefitting from someone else's
2 disclosure or use of the trade secret.

3 But that absence of that particular party
4 configuration distinguishes, I think, this case from the
5 cases upon which KPM relies. If KPM can't show that ITG
6 itself used or disclosed the trade secret, then whether or
7 not it knew about a trade secret is irrelevant.

8 Secondly, we don't think that ITG did know that
9 there was a trade secret. There's no evidence that suggests
10 otherwise. And the inferences that KPM tries to draw to the
11 contrary, we think, fail.

12 THE COURT: You don't think you can draw reasonable
13 inferences in support of that knowledge.

14 MR. RITCHIE: I don't think they're reasonable,
15 Your Honor, no. There are -- there's a whole litany of what
16 did Blue Sun do? What did Mr. Lucas do? Et cetera,
17 et cetera.

18 I think it's important for context that the Court
19 understand that ITG was in this business long before Blue Sun
20 came around. The original design of the KPM machine comes
21 from ITG. So it is perfectly possible for ITG to have hired
22 these defendants, without believing that they were going to
23 violate any contractual protection or disclose a trade secret
24 and employ them in selling the machines that ITG has made for
25 a long time. And given that history, I don't think there's a

1 reasonable inference, well, there has to be some malfeasance
2 on ITG's part, simply because it hired these people to sell
3 these machines. So I don't think that's a reasonable
4 inference to make.

5 And I don't think the law supports the particular
6 theory that KPM is advancing here. If ITG itself is not
7 using the trade secret, it can't be liable under 757 of the
8 restatement of torts, and it can't be liable under the
9 Massachusetts laws that have been interpreted, that section
10 and the federal and state Trade Secrets Act.

11 So I hope that answers Your Honor's first question.

12 Let me just address, briefly, the other two counts.
13 There is a conversion count, I believe, which still stands.
14 But we think that goes away, because there's no proof that
15 ITG itself has converted any property or trade secret of KPM.
16 So that count should depart.

17 And then, finally, there is the Massachusetts
18 General Law, 93A, Section 11 count. I think the same
19 arguments that have applied to the trade secret and tortious
20 interference count would also apply there. So I'm happy to
21 move on to the alter ego veil-piercing theory, unless the
22 Court has any further questions.

23 THE COURT: No. Go ahead.

24 MR. RITCHIE: So I guess I'd start with the answer
25 that the 30(b)(6) witness from KPM gave me at a deposition,

1 when I asked him about the basis of the claims against ITG,
2 and I was told that, well, the basis is because ITG and Blue
3 Sun are almost a singular entity that have a common facility
4 and a common ownership.

5 Well, you know, as we've said in our papers, there
6 was no alter ego or veil-piercing theory pled, per se, in
7 plaintiff's complaint or amended complaint in this case. So
8 I don't think, for that reason, that it ought to be able to
9 pursue it.

10 But even if the Court were to allow it, I think
11 that the KPM claims would fall far short of the four-factor
12 test that's been set out in Massachusetts law for veil
13 piercing or establishing an alter ego. And importantly, the
14 rule in this state, as I understand it, and in many other
15 states, is simply that mere ownership of one corporation by
16 another is not enough to pierce the veil or to establish an
17 alter ego. So the mere fact that ITG happens to own Blue Sun
18 is, not in and of itself, a dispositive fact at all. It's
19 one of other 12 other factors that gets weighed in. And
20 ownership of one party is not uncommon at all by another
21 party.

22 I think the other part, before I get to the
23 12-factor test, is the context of when an alter ego claim can
24 be pursued. Alter ego claims are generally reserved for
25 situations where a party has been defrauded in contractual

1 dealings, thinking that it was dealing with one party, when
2 it was actually dealing with another, or where assets have
3 been transferred from one entity to another to avoid
4 judgment.

5 This case does not involve fraud. It does not
6 involve fraud on KPM. KPM has alleged a whole host of other
7 things, but the one thing that KPM has not alleged is that it
8 didn't know who Blue Sun was or who ITG is. That was
9 transparently clear to them. So this is not the situation
10 where the alter ego claim would arise, and I don't think that
11 it's properly used in this context. And for that reason, ITG
12 would be entitled to summary judgment.

13 Turning to the other factors -- and, you know,
14 we've listed them either in a footnote. Some didn't
15 necessarily apply.

16 THE COURT: I'm familiar --

17 MR. RITCHIE: Yeah. But importantly, for the
18 factors that do apply, there are no loans or capitalization
19 of Blue Sun by ITG. The evidence is undisputed that Blue Sun
20 has the authority to hire and fire employees as it chooses.
21 Blue Sun sets the price it charges customers for the NIR
22 Analyzer machines itself.

23 And I think, most importantly for this case, Blue
24 Sun and ITG enter into an arm's length transaction with
25 respect to the sale of machines. ITG manufactures the

1 machines. It then sells those machines to Blue Sun. And
2 upon sale by Blue Sun, ITG gets 65 percent of the profit, and
3 Blue Sun gets 35 percent.

4 This is not a situation where ITG just simply ships
5 a machine down to Blue Sun, and they both own it. And if
6 they sell it, great; if they don't -- both parties pay their
7 own costs out of the proceeds of the sale to the ultimate
8 customer. And this has been memorialized, and there's no
9 evidence to the contrary that this is exactly how these
10 parties operate.

11 ITG requires no financial reporting or sales
12 forecasting from Blue Sun, and ITG receives no revenue from
13 Blue Sun's service or support from the NIR Analyzer,
14 including the plaintiff's machines. And I know that the
15 servicing issue has been focused by the plaintiff in this
16 case.

17 So we think that this clearly demonstrates that ITG
18 and Blue Sun are separate entities and have separate bank
19 accounts. There's no -- there's no allegation of fraud, that
20 KPM was defrauded by the confusing identities of these two
21 parties, and for that reason, we do not think that the veil
22 piercing applies.

23 And with that, Your Honor, I'll rest, unless the
24 Court has any --

25 THE COURT: Okay. Let's hear what KPM has to say.

1 MR. GUTKOSKI: Thank you, Your Honor.

2 ITG would have the Court believe that the record
3 shows that ITG and Mr. Wilt hired Mr. Lucas, let him begin
4 working for ITG in establishing Blue Sun, while he was still
5 at KPM, and then had no knowledge of his actions after
6 that -- had no knowledge that he staffed Blue Sun solely with
7 KPM employees; that he had those employees benefit -- conduct
8 actions to benefit Blue Sun and to migrate KPM customers over
9 to Blue Sun, while they were still employed and taking a
10 paycheck from KPM; and that ITG directed and transferred the
11 entire sales effort of its own Analyzers over to Blue Sun and
12 these former KPM employees, and never had any knowledge,
13 whatsoever, as to whom they were selling these to, how they
14 were selling them, and had no involvement in their actions.

15 The record, in fact, does not show such lack of
16 knowledge or lack of participation. Rather, it shows that
17 Mr. Wilt and ITG was involved with hiring some of the -- and
18 interviewing some of the additional KPM employees after
19 Mr. Lucas; that they were involved in having the sales folks
20 that they already had, prior to the creation of Blue Sun and
21 Mr. Lucas, work hand-in-hand with him to transfer the
22 information that they had regarding customers over to him and
23 to get his information about those customers; and that they
24 were involved in sharing of technical capabilities about the
25 ITG, what used to be called the M5 Analyzer, that then got

1 rebranded as the Phoenix, and sharing that with such
2 customers.

3 These e-mails and communications that involve
4 employees of both ITG and Blue Sun are attached to
5 Mr. Magee's declaration. And I specifically direct the Court
6 to Exhibits 11 through 14, 18 to 19, 21, 23 to 24, and 26.

7 In fact, Mr. Wilt did know that he was giving
8 complete control over the sales of all Analyzers that ITG
9 would be manufacturing and selling, going forward, to
10 Mr. Lucas. At best, Mr. Wilt deliberately did not ask
11 Mr. Lucas about any contracts that he had and would have the
12 Court believe that he can escape liability, and ITG can
13 escape liability, merely by setting up a wholly owned
14 subsidiary, putting Mr. Lucas in charge of it, and then
15 directing him to go off and sell to these KPM customers and
16 sell these Analyzers, without knowing why their sales were
17 increasing, why these customers were buying them, or why
18 Mr. Lucas and the KPM employees were having the success that
19 they had.

20 The law does not permit him to do that and does not
21 permit him to avoid liability by putting his hands over his
22 eyes --

23 THE COURT: So let me just jump in here. So you
24 say these, and other facts, are sufficient to draw a
25 reasonable inference that they did know?

1 MR. GUTKOSKI: Correct. Not only to draw the
2 reasonable inference, but to see that they actually
3 participated in the actions noted in those -- the exhibits
4 that I noted.

5 THE COURT: So do you agree with defense counsel
6 that -- or disagree with defense counsel, or it doesn't
7 matter, as to whether ITG used or disclosed the trade secret?
8 You say I don't have to worry about whether that's a
9 requirement or not, because these e-mails show that they did
10 participate?

11 MR. GUTKOSKI: They did participate, but in
12 addition, Your Honor, the law is clear that, under the
13 *Curtiss-Wright* and *Optos* line of cases, that somebody who
14 benefits from the misuse of a trade secret. And here, the
15 only Analyzers that were sold benefitted both Blue Sun and
16 the manufacturer at ITG. And so the -- every sale that went
17 to a KPM customer, through the diverted customer
18 relationships by Blue Sun and the former KPM employees,
19 directly benefitted ITG, and ITG can be held liable for those
20 improper sales and those unfair and deceptive trade practices
21 utilized in selling them.

22 THE COURT: And is it your position, you can pierce
23 the veil, even though you're not a creditor?

24 MR. GUTKOSKI: It's our position that if there were
25 to be no direct liability, for all the reasons that we've

1 just been discussing, that the would have piercing the veil
2 and indirect liability due to the extensive ownership,
3 control, and operation of Blue Sun by ITG, given the fact
4 that Blue Sun's entire existence is for using these former
5 KPM customer relationships in order to make sales for ITG.

6 THE COURT: So is that right, though, that piercing
7 the veil reaches that far?

8 MR. GUTKOSKI: I think it does, Your Honor. I
9 think the level of control here, and the fact that Blue Sun
10 was, we believe it will be shown at trial, created solely for
11 the basis of acquiring these relationships, misusing these
12 trade secrets and confidential information, confusing these
13 customers, in order to sell a product for -- that had not
14 been selling very well for ITG, and then begin selling much
15 more effectively to those very customers. And under these
16 circumstances, it would extend that far, because otherwise,
17 Blue Sun wouldn't exist.

18 THE COURT: Okay. Anything else you want to say in
19 reply to that, before I turn to the injunction?

20 MR. GUTKOSKI: Sorry, were you directing that to
21 Mr. Ritchie or to myself, Your Honor?

22 THE COURT: Yes, to Mr. Ritchie. Sorry.

23 MR. RITCHIE: Just briefly, Your Honor. I just
24 wanted to say, I want to make sure that -- you know, counsel
25 keeps talking about the downstream benefits to ITG, and the

1 fact that Blue Sun hired these folks and ITG knew that Blue
2 Sun hired these folks. There's nothing that prohibits Blue
3 Sun from hiring these people. What's at issue in this case
4 now is whether or not these individuals breached provisions
5 of their confidentiality agreement with KPM, not prevent them
6 from working for Blue Sun. So that, in and of itself,
7 establishes absolutely nothing.

8 What plaintiff has to establish is that ITG knew
9 there were confidentiality agreements and knew that they were
10 being breached by these individual defendants. Not a single
11 one of the e-mail that Mr. Gutkoski so obliquely referenced
12 in his argument established any action by ITG that would
13 establish liability, either under the trade secrets count or
14 the tortious interference of contract count. And I want the
15 Court to understand that.

16 And finally, again, the downstream benefits do not,
17 in and of themselves, establish liability. The law is clear
18 that a defendant has to do something in order to expose
19 itself to liability under these trade secret claims. So even
20 if it knows that a trade secret is being violated, that, in
21 and of itself, is not enough. It's under no duty to
22 investigate the issue. There's no case that says that. It's
23 only where defendant itself has taken actions to disclose or
24 use the trade secrets, that's where the law comes in. That's
25 what a defendant will have to answer for. That hasn't

1 happened here with ITG.

2 And I just add, Your Honor, with the notion that --
3 and we've cited a couple of cases to this effect in our
4 papers. Piercing the corporate veil is not, in and of
5 itself, a cause of action. The purpose of piercing the veil
6 is to protect, Your Honor pointed out, creditors of
7 companies. And so for that reason, we don't think the
8 piercing veil argument flies, either.

9 Thank you.

10 THE COURT: Okay. Thanks.

11 I'll hear you on the preliminary injunction.

12 MR. WILSON: Thank you, Your Honor. I'm going to
13 be handling that, on behalf of the individual defendants.
14 I'm mindful that you've read the papers, and, therefore, I
15 won't belabor all of the points that we raised.

16 But as Your Honor is likely aware, back in August
17 of 2021, Judge Hillman entered a preliminary injunction that
18 had various provisions in it, but two in particular that are
19 salient to the motion today; and that is, an order that
20 enjoined the individual defendants and Blue Sun from
21 servicing any NIR instruments that were manufactured by KPM
22 and also selling any of the Blue Sun Analyzers to any former
23 KPM customers that they interacted with while they were at
24 KPM.

25 And we're asking the Court to, at a minimum, modify

1 the injunction to remove those two provisions so that the
2 individual defendants can service any NIR instruments and
3 that they can sell Blue Sun instruments to any customers that
4 would like to buy them.

5 A couple of factual points that I think are very
6 important up front, and that is that none of the individual
7 defendants have worked for KPM for quite some time.
8 Mr. Lucas hasn't worked there for almost four years. It's
9 been two-and-a-half years since Ms. Glenister worked there.
10 It's been almost two years since Mr. Gajewski worked there,
11 and it's been a little over two years since Mr. Eilert worked
12 there.

13 I'm going to focus my argument today on one of the
14 factors that the Court considers when dealing with
15 preliminary injunction, and that is irreparable harm. And as
16 we argued in our papers, we don't think there's no evidence
17 of irreparable harm. We didn't think there was any back in
18 August, when the Court entered the order. But certainly, a
19 year and a half later, there's simply no evidence that KPM is
20 going to suffer any irreparable harm if the individual
21 defendants are simply allowed to service customer instruments
22 that those customers want to be serviced by Blue Sun, and to
23 sell instruments to customer that want to buy Blue Sun
24 instruments.

25 Injunctions are not designed to punish past

1 conduct, but are designed to prevent irreparable harm in the
2 future. KPM's opposition to the motion focusses almost
3 exclusively on events that occurred years ago. In fact,
4 almost all of the conduct that they complain of occurred
5 while at least one of the individual defendants was still
6 employed by KPM.

7 But what they have admitted to, because they have
8 to, is that none of the individual defendants took anything
9 with them. There's no evidence that they downloaded any
10 information, that they took anything out the door with them.

11 When the original motion for an injunction was
12 filed, they made a big deal that Mr. Eilert had a bunch of
13 NIR equipment in his basement that they said was KPM property
14 that he improperly retained. Just to show how silly that
15 argument was, Mr. Eilert subsequently returned that. He
16 boxed it all up. He sent it to KPM.

17 And during KPM's 30(b)(6) deposition, I asked the
18 representative, "Well, what did you guys do with that
19 equipment?" And they said, "Nothing. It's still in the
20 boxes." They hadn't even opened it, hadn't even looked to
21 see what he had taken. It's still, presumably, collecting
22 dust somewhere in a KPM warehouse.

23 The other item that was allegedly retained was a
24 thumb drive that Mr. Gajewski had used to transfer
25 information between two KPM computers while he was still

1 employed. He testified that he never looked at it; that he
2 forgot he had it. He subsequently returned it to KPM.

3 KPM has not suggested, based on their review of
4 that -- that thumb drive, which they've had in their
5 possession now for quite some time, that there's any evidence
6 of improper use of that information.

7 So the record before the Court is that there was no
8 information that was taken from KPM from any of the
9 individual defendants. And so what we're left with is, sort
10 of, this information that it's in the heads of these four
11 individuals. As the record showed, all of these individuals
12 worked in the NIR industry long before they were employed by
13 KPM. They knew many of these customers beforehand.

14 THE COURT: Mr. Wilson, is -- circumstances have
15 changed.

16 MR. WILSON: Sure.

17 THE COURT: Versus how much of this is, "You know
18 what? You, Judge, should reconsider what Judge Hillman did."

19 MR. WILSON: Well, we're certainly not asking the
20 Court to reconsider what Judge Hillman did. I think there
21 are a couple of important points here. One is, what has
22 happened in the year and a half since the order entered?
23 Well, a couple of really important things happened:

24 Number one, KPM admits that it changed all of its
25 pricing. So the individual defendants don't know anything

1 about KPM's current pricing, which was a big deal when the
2 original order was entered.

3 Secondly, they've introduced new product offerings.
4 Again, individual defendants don't know anything about that.

5 They've changed their marketing strategies.
6 Individual defendants don't know anything about that.

7 At most, what they know about are things about
8 customers from two, three, four years ago. And that
9 information, it goes stale.

10 They could easily have gotten that information from
11 the customers, certainly within a year and a half. There
12 could be some argument that, yeah, a noncompete for a year,
13 or so, would be appropriate so that KPM could shore up those
14 relationships. But the idea is that it seems like KPM is
15 suggesting that there's going to be some perpetual noncompete
16 that is going to exist even after trial. And there's simply
17 no law, that we're aware of, that would permit that.

18 The other changed circumstances that Judge Hillman
19 seemed to be concerned about is customer confusion; that
20 there was some confusion among customers whether they were
21 dealing with KPM or whether they were dealing with Blue Sun.
22 We've put some evidence forward, sort of, after the expedited
23 discovery that shows there wasn't really any customer
24 confusion in the first place. But KPM sent out a letter to
25 every single active customer, explaining the differences

1 between the companies. We think they improperly maligned
2 Blue Sun in that process, suggesting that Blue Sun was going
3 to go out of business because of this litigation, and,
4 therefore, customers shouldn't do business with them.

5 There's no evidence that, sort of, after the
6 injunction was entered, that Blue Sun has somehow improperly
7 suggested to any customers that they are related to KPM in
8 any way. Customers are well aware at this point. There's a
9 public lawsuit that's been pending for a couple of years. So
10 again, there's no -- there was no irreparable harm that's
11 going to be caused by customer confusion. That's all been
12 resolved.

13 And then the last point that I would just like to
14 make is, sort of, dovetailing off of what I just mentioned,
15 which is, you know, those who seek equity, must do equity.
16 And what KPM has done is they've used this injunction order
17 as a weapon against Blue Sun. They've told customers, "Oh,
18 they're going to go out of business because of this lawsuit.
19 You shouldn't do business with them." Privately, they've
20 been admitting that unless this injunction is vacated, Blue
21 Sun is likely to go out of business. An injunction is
22 designed to maintain the status quo until we get to trial.
23 It's not to be used as a weapon to put one of the parties out
24 of business so they can't ever get to trial.

25 I think, in fact, one of the most egregious

1 examples that we've presented in our motion is that KPM has a
2 special sales incentive to target Blue Sun customers, and the
3 salesperson will -- to get somebody to switch over, they
4 offer these customers a free Analyzer. These are equipment
5 that cost tens of thousands of dollars. They're willing to
6 eat that cost, as long as they can take a customer from Blue
7 Sun, convert it over to KPM. And I think they're going to
8 offer the salesperson a case of French wine or something like
9 that. Meanwhile, KPM -- or Blue Sun and the individual
10 defendants have their hands tied behind their back because of
11 this injunction order.

12 So it's been a year and a half. Any harm that the
13 injunction was designed to prevent, has been prevented. And
14 at some point, KPM is going to have to compete with Blue Sun,
15 and we think that time has long since passed. These
16 individuals signed one-year noncompetes. KPM certainly
17 understood that within a year, they would be allowed to
18 compete. They've gotten the benefit now of a
19 year-and-a-half-long noncompete, which was more than they
20 even bargained for.

21 And ultimately, if Your Honor is reluctant to
22 simply dissolve the entire injunction, certainly you can keep
23 in place any kind of order that prohibits the use of
24 confidential information or trade secrets. Again, there are
25 none. They don't have possession of any. That seems to be

1 undisputed. So there are certain protections that can be
2 maintained to ensure that true trade secrets and confidential
3 information aren't being used.

4 But the de facto noncompete part of the noncompete,
5 or of injunction, we think has run its course. We have no
6 trial date. It's unclear when this action will ultimately be
7 resolved. And so --

8 THE COURT: When do you want it?

9 MR. WILSON: I suspect we'll maybe get to that,
10 hopefully today.

11 But in the meantime, this is really harming Blue
12 Sun, and there's really no harm to KPM if they're simply
13 forced to compete on a level playing field with Blue Sun
14 and --

15 THE COURT: Understood. Let me see what
16 Mr. Gutkoski has to say.

17 MR. GUTKOSKI: While, this is the first opportunity
18 for Your Honor personally hearing these arguments, the court
19 has actually heard them now for a fourth time. Judge Hillman
20 considered many, if not all, of these arguments, in one form
21 or another, in entering a very focused and specific
22 preliminary injunction. And he kept that injunction in
23 place, which he ordered for the duration of this action, as
24 noted in the injunction itself, document number 94 on the
25 docket, over two subsequent -- this now being the third

1 subsequent attempt to try to dissolve this injunction.

2 In establishing the injunction, Judge Hillman
3 explained, and the Court explained, in Document 93, at
4 page 22, that, "The record shows the defendants' actions to
5 divert KPM customers are ongoing, suggesting a high
6 possibility of future harm, and they have caused customer
7 confusion and alarm, which likely affects KPM's goodwill.
8 KPM stands to lose future preventative maintenance, the
9 annual maintenance these Analyzers go through, and future
10 Analyzers sales opportunities as a result of defendants'
11 actions."

12 Your Honor, KPM contends that this argument today
13 is just the latest in the ongoing actions. And damage to --

14 THE COURT: Right. But at some point -- sure. But
15 what is the categories of confidential information and trade
16 secrets that you're seeking to protect for your client?

17 MR. GUTKOSKI: So the argument that you just heard
18 from defense counsel focused on the customer information and
19 completely avoided the technical information.

20 THE COURT: That's why I'm asking you what you're
21 trying to protect.

22 MR. GUTKOSKI: Correct. Sorry for the long-winded
23 introduction. The technical information that was misused --
24 misused here was in many -- several different forms. First
25 of all, they were the application notes and data that was

1 misused, taken from KPM, and misused by Mr. Gajewski and
2 Mr. Lucas, to misrepresent the measurement capabilities of
3 the Phoenix Analyzer. While those application notes were
4 returned, the population of customers has been lied to by the
5 misuse of those trade secrets as to what the Phoenix Analyzer
6 can and can't do.

7 These customers have been -- were told for over a
8 year that this Analyzer, this competing analyzer was just as
9 good as the KPM SpectraStar. And the fact is that that
10 information was all taken from us and misrepresented that
11 those measurements have been taken, and those analyses have
12 been done on their machines. So the customers are -- are --
13 have been misled to that regard.

14 THE COURT: So one piece of information you're
15 seeking to protect is the application notes and data.

16 MR. GUTKOSKI: Correct.

17 THE COURT: Even though it's been returned -- and
18 that, you say, has been returned.

19 MR. GUTKOSKI: Correct.

20 THE COURT: But you say that there's downstream
21 harm flowing from the taking and use of it before it was
22 returned.

23 MR. GUTKOSKI: Correct. And the cases make it
24 clear that if there is a risk of ongoing harm to the trade
25 secret holder, the one whose property has been misused, then

1 an injunction is appropriate to prevent that additional harm
2 to --

3 THE COURT: So the risk here is that they use that
4 information -- they continue to use that information to
5 compete.

6 MR. GUTKOSKI: Correct.

7 In addition, Your Honor, not only was it the
8 data and the data points and the measurements, but the UCal
9 software, which Mr. Gajewski admits that he had copies of and
10 misused in order to generate those application notes, as well
11 as to actually service particular customers in moving their
12 calibrations and data from the KPM SpectraStar platform onto
13 the Phoenix platform. And Blue Sun continues to offer the
14 migration of calibrations to its customers. So while they
15 claim they have returned all copies of the software, they're
16 still offering that service and apparently would intend to
17 offer that migration to their own platform.

18 THE COURT: But the migration service, what right
19 do you have to prevent the migration service?

20 MR. GUTKOSKI: It depends on what types of
21 calibrations they would be migrating. If it's
22 calibrations -- if it's data that the customer themselves has
23 measured on its own, without any involvement of KPM software
24 or KPM's data libraries, then they would be free to do that,
25 assuming they're not using a copy of our software.

1 If, however, it is a much more extensive dataset
2 that includes KPM data that exists on that machine from a
3 historical standpoint, and they migrate those files, those
4 can only be accessed with our software and with the knowledge
5 that those technicians have regarding our platform. So it
6 would depend upon the individual circumstance.

7 In addition, Your Honor, if they go out and just
8 try to service the existing Unity machines, there are two
9 points of concern here. One is tat they are trying to, as
10 they had before they were enjoined, emulate the type of
11 service and the caliber of service that they were providing
12 when they were with KPM, using the same checklists, using the
13 same forms, using the same processes to --

14 THE COURT: Hold on.

15 Yes, Rachel?

16 THE COURT REPORTER: I cut out at "using the same
17 forms, using the same processes to," and please start there.

18 MR. GUTKOSKI: That would require me to remember
19 what I said.

20 Using the same forms and the same processes to
21 provide the same caliber of service to the customers that
22 they previously provided while they were at KPM.

23 But Your Honor, the bigger danger here is to take
24 account of what type of products we're talking about. And
25 the fact that --

1 THE COURT: So those are the three things that
2 you're trying to protect, though, right?

3 MR. GUTKOSKI: We're trying to protect -- from a
4 technical standpoint, yes. There is a host of customer
5 information, which is attacked by the defendants and
6 responded to in our papers, regarding knowledge of the age of
7 a particular machine at a given customer, how satisfied or
8 dissatisfied that customer has been, what adjustments need to
9 be made on an annual basis to keep that customer happy, what
10 the pricing has been.

11 And rather than look at the entire record of that
12 information and of these customer relationships and of the
13 communications with these customers, instead, the individual
14 defendants have come in here and said, "Well, dissolve the
15 injunction, because when we depose the representatives, the
16 30(b) (6) representative of KPM, he didn't know all the
17 specifics about how we have treated these customers and what
18 the communications has been and to what degree those
19 customers have been either confused by what we have told them
20 or to what extent we have leveraged our prior knowledge of
21 them and their needs in pursuing them, and the success or
22 lack of success we have had in pursuing them both to migrate
23 over to Blue Sun and hopefully to sell them a new Analyzer
24 down the line."

25 Well, KPM doesn't have that information, because

1 everything that was produced to KPM was protected as
2 attorney's eyes only under the protective order. So KPM does
3 not know the details of each customer relationship and to
4 what extent that customer relationship has been undermined by
5 Blue Sun, unless the customer has shared any of those
6 concerns directly with KPM. And in a couple of cases that's
7 true, but certainly not for the over 35 customers and over
8 140 machines that were involved by the defendants'
9 inappropriate actions here.

10 So for the individual defendants to come in today
11 and say, "Well, look at the few sound bites that KPM has
12 provided regarding what they know about these relationships,"
13 and/or the fact that, yes, they updated their prices at a
14 given point of time. But no effort has been made to tie
15 those updates of those prices to any of these customers and
16 what is being offered to these customers. There's been other
17 product offerings. True. But there's been no effort by the
18 defendants to tie any of those new product offerings to what
19 is or is not being offered to these particular customers.

20 So they have come in and asked now the Court, for
21 the fourth time, to say, "Okay. Before we get to a trial,
22 before we hear all the evidence, lift the injunction, and let
23 us go and compete for these customers." Why? Why are they
24 asking now? Because it's been about a year and a half since
25 the annual servicing happened. They know these customers are

1 looking for their next customers -- I'm sorry, their next
2 servicing, and they're asking to go out now and be able to
3 provide that servicing in order to continue their effort to
4 migrate those customers over to Blue Sun, rather than go
5 forward, let the jury hear all the evidence as to how these
6 customers have been lied to, how they've been misled, the
7 confusion that has resulted, and the impact on the company's
8 -- Blue Sun and KPM -- and come to a verdict.

9 If there is any actual concern here in terms of the
10 impact on Blue Sun, the solution here is to proceed to a
11 trial, and let all the facts be considered, as opposed to
12 cherry-picking through them the way the defendants seek to do
13 so.

14 Furthermore, Your Honor, for the defendants to come
15 in now and argue that there is some resolution to the
16 irreparable harm to KPM and some sort of impact on Blue Sun
17 is completely contrary to the record. Mr. Lucas, testifying
18 as the 30(b) (6) on behalf of Blue Sun, made clear that the
19 injunction has had virtually no impact on Blue Sun's
20 revenues, has no impact on their sales, and has no impact on
21 their business.

22 Both ITG's, Mr. Wilt -- when he testified as the
23 30(b) (6) of the parent company, ITG, and Mr. Lucas testifying
24 on behalf of Blue Sun, said that the focus of their business
25 is actually not to compete with KPM, but rather to compete

1 with another competitor, FOSS, and to replace their machines.
2 If that's the case, the fact that they are limited by the
3 very focused injunction that Judge Hillman established,
4 regarding not misusing the customer relationships that the
5 Blue Sun employees took from KPM, should have no impact on
6 them. If it has been, let them show so at trial.

7 Sorry, Your Honor, we lost you.

8 THE COURT: Yeah. Okay. I was just muted for a
9 second.

10 Okay. That's helpful.

11 Well, let me segue to another topic, then. With
12 respect to the motions, this has been really helpful to
13 focus. I've read all the papers. I apologize it's taken me
14 a little longer to get to this than I would have liked. I
15 know these motions have been pending, some of them, for a
16 while, but I intend to resolve both of them promptly. I've
17 read them all. I found the arguments of all view helpful to
18 clarify some of the issues in your positions today.

19 A couple, sort of, case management questions while
20 I have you that I wanted to talk to you about. Obviously,
21 the questions are somewhat contingent on the resolution of
22 these motions, but not completely. The first is with respect
23 to trial. Let's -- the longest trial is if everything stays
24 in the case. ITG is in, all the claims are in. How long is
25 that trial?

1 MR. GUTKOSKI: Your Honor's practice is to try 9:00
2 to 1:00?

3 THE COURT: Yes. So here's how I do it. This is
4 my response to -- that question comes up a lot. So I'll meet
5 with -- the first day we'll go however long it takes to get
6 the jury. Generally speaking, I go 9:00 to 1:00. What that
7 means is I'll meet with all of you at 8:30 in the morning, to
8 review evidentiary issues, so that at 9 o'clock sharp, we
9 start with the jury. And we'll go until 1 o'clock. So if at
10 five of 1:00, you're done with a witness, let's call the next
11 witness. So yes, it will be 9:00 to 1:00.

12 Sometimes I'll go do some afternoons, but only if I
13 tell the jury that in advance. My experience, generally, is
14 that the jurors like the 9:00 to 1:00 a lot, and that if
15 you're efficient, which means spending time talking about
16 legal issues before 9:00 a.m. or after 1:00 p.m., rather than
17 having the jury sit there, you can get almost as much done
18 with 9:00 to 1:00, as you can with, sort of, the 9:00 to
19 1:00, 2:00 to 4:00, or some variation of that schedule.

20 So yes, with that kind of efficient approach, how
21 long do you think it would be?

22 MR. GUTKOSKI: KPM would expect that we could
23 probably try the entire case in five days, five to seven
24 days, say.

25 THE COURT: All right. Does that sound reasonable

1 to you, Mr. Ritchie and Mr. Wilson?

2 MR. RITCHIE: Just first reactions, Your Honor,
3 probably a similar amount of time. I'm thinking about the
4 number of witnesses. And I've never tried a case 9:00 to
5 1:00. I actually like the idea. I've never thought about
6 that before. But I would think five to seven days is
7 probably.

8 THE COURT: You know, the Revolution came out of
9 Boston. Right? And it spread across the rest of the
10 country. So this is a way to do things, and eventually maybe
11 it will take hold in the rest of the country, just like, you
12 know, independence.

13 MR. RITCHIE: That's perfect. The tea party.

14 THE COURT: That's right. The tea party started
15 here.

16 Okay. So that gives me a sense.

17 So the second issue that I wanted to raise with
18 you -- so how soon are all of you -- suppose I resolved all
19 of this today -- I'm not resolving all of this today. I'm
20 taking it under advisement. But you expect me to resolve it
21 pretty quick. But suppose it were resolved today. How
22 soon would -- when would we be talking about this trial, from
23 your perspective? When would you all be ready?

24 And I know you need 30 days, at least, but are
25 talking about is it something that people might be able to --

1 subject to schedules, and all of those things -- I'm not
2 asking specific dates now. But is there was any reason, if I
3 had it all done today, would we be, from your perspective --
4 I'm not sure if I'm available, but from your perspective,
5 would we be talking about, like, April? Or would we be
6 talking about -- it would make more sense, for whatever
7 reasons, from your perspective, a little later?

8 MR. GUTKOSKI: This is doable in April or May, Your
9 Honor, from plaintiff's standpoint.

10 THE COURT: So from your perspective, once I
11 resolve it, the earliest date possible, subject to 30 to
12 45 days to prepare.

13 MR. GUTKOSKI: Correct.

14 THE COURT: And subject to individual scheduling
15 about a particular week or something?

16 MR. GUTKOSKI: Correct.

17 THE COURT: And how about for the defendants?

18 MR. RITCHIE: I would agree with that, Your Honor.
19 I think that May is probably -- I think you haven't asked
20 about our personal schedules. I think May is probably better
21 for me, but I agree generally.

22 THE COURT: Okay. So then the other issue that I
23 want to raise with you is this: This is a Worcester case, if
24 I recall correctly.

25 MR. GUTKOSKI: Correct.

1 THE COURT: It was originally Judge Hillman's case,
2 so it was Worcester division. So that raises two questions.
3 One is, I suppose, unless you agree otherwise, I think that
4 that means that the jury -- that the trial should be in
5 Worcester, because it would be a Worcester -- it's a
6 different jury pool in Worcester than Boston.

7 MR. GUTKOSKI: I think that's correct, Your Honor.

8 THE COURT: I don't think there's any prohibition
9 on -- I don't know that there's any rule that would prevent
10 me from trying it in Boston, if all of you agree, but I think
11 my -- my general view is that the random assignment and venue
12 rules, you know, is -- it's filed seemingly appropriately. I
13 have no reason to doubt that. So Worcester, so it would be a
14 Worcester jury pool. I wouldn't call Worcester jurors into
15 Boston. We would do it in Worcester.

16 It's up to you. I don't have -- I'm not -- you can
17 think about that. You don't have to answer that now. But
18 that -- I will just tell you that I think that it goes to --
19 it's tried in Worcester, with a Worcester jury, instead of in
20 Boston, with a Boston jury, unless you all agree.

21 I have to think about that, whether I have any
22 independent authority without your agreement to transfer it.
23 It's certainly more convenient for me in Boston than
24 Worcester. On the other hand, I don't think that's the
25 touchstone, and so I'd have to see what you all could think

1 about that and if you have a view.

2 And the last related issue, that is separate but
3 related, certainly nothing prevents me from going to
4 Worcester to try a case there. There's a little bit of more
5 scheduling issue, just in terms of courtroom available, and
6 so forth. But as you may or may not know, I suppose you do
7 know, that Judge Hillman took senior status, and my
8 understanding is that the President has nominated somebody.
9 There were a number of nominees in our district. And my
10 understanding is they're all -- I think they've all been
11 voted out of the Judiciary Committee, so they're all sitting
12 on the floor of the Senate, waiting for votes to see if the
13 Senate confirms them or not.

14 So if somebody -- if the Senate does confirm those
15 people -- I have no -- they're not confirmed unless and until
16 the Senate decides to confirm them and that is something over
17 which I have no knowledge or influence or role. But if they
18 do, one of those people will be a Worcester nominee. I guess
19 the question is, do you have a preference as to whether the
20 case -- this might not be up -- probably not up to you, but
21 some preference about that?

22 And I don't -- look, you're not offending me if you
23 said, "Judge, we really want the Worcester judge." I don't
24 really care. I have plenty of cases. I'm happy to try this
25 case, it doesn't matter to me.

1 So you can think about all of that, those things.
2 You don't have to tell me anything about that. The only
3 other question that I would have is whether, in thinking
4 about these things, you would want to --

5 Well, I understand that a speedy trial is helpful
6 because of the injunction. If the injunction stays fully in
7 place or partially in place, you want a speedy trial, because
8 the injunction is preliminary, and you get to the end and
9 then you see what happens. If you win the case, that's good
10 at the end of the injunction if you're the defendants. And
11 if you lose it, it's going to be an injunction that's crafted
12 in light of whatever the jury's verdict is, if there is a
13 further injunction. So -- and from -- I assume the plaintiff
14 has a similar interest in moving fast. So I get that. I
15 don't know if that weighs in at all to these questions about
16 a Worcester jury or not or whether you want any opportunity
17 to mediate between the time that I resolve these things and
18 the jury trial date.

19 So you can think about all of that. This is --
20 unless someone has anything they want to say about that, my
21 thought is to proceed. I will resolve these motions, and I
22 will either pick a trial date -- probably what I'm likely to
23 do is schedule a trial date, or I'll schedule -- ask you to
24 give me a status report, which says what all of your
25 different positions are. I'll have a status conference.

1 I'll see.

2 If you do -- since you brought it up, Mr. Ritchie,
3 a fair point, if I do issue a trial date, I won't know what
4 your personal schedules are. By my picking the date, I don't
5 mean to, like, drive a truck over your personal lives. And
6 so what I would say is I would like -- what I would say is,
7 if I pick a specific date, then what I'd want you to do is
8 within, like, a week, come back and say, "Judge, that
9 week doesn't -- I have a personal problem with that week. I
10 a vacation," or, "I have a wedding," or whatever your
11 personal matter is. And I'm happy to work with all of you to
12 adjust then, if I can. It's just my first stab at the first
13 available date that I can give you.

14 But don't wait. If you come back to me a week
15 before the trial and say, "Judge, you know, it conflicts with
16 this wedding of my kid," I'm going to be like, "Yeah, well,
17 did your kid just decide to get married yesterday?" If they
18 did, okay, maybe. But if the -- most of these things are
19 planned pretty far in advance, then, like, why didn't you
20 tell me before? That's why I gave you that week or two to
21 sort of raise it when it's flexible. But then once it's set,
22 people rely on it. I make my schedule on it, probably all
23 the witnesses, the lawyers. So I think you understand.

24 Anything else we can do today? Anything anyone
25 want to address?

1 MR. GUTKOSKI: Just one question, Your Honor, of
2 the interrelatedness between the Worcester venue question and
3 the scheduling question. Assuming we're going forward with
4 having Your Honor try the case, does it make any impact on
5 the trial date or likely trial date if we had an agreement to
6 do it in Boston versus doing it in Worcester?

7 THE COURT: The honest answer to that question is
8 it probably makes it -- it makes it somewhat easier for me to
9 give you a date earlier. I can't say for sure, but like all
10 the things being equal, it's just simpler for me in Boston
11 because I'm in Boston, all of my cases are in Boston. So for
12 me to say, okay, I'm going to Worcester for two weeks or a
13 week, a week and a half, I have to think about am I moving --
14 it's not --

15 I should have said this in the beginning, the Zoom
16 proceeding, you can't, the regular rules apply, which means
17 there's no audio recording, no video recording, no still
18 photography, no broadcasting and rebroadcasting. But the,
19 sort of, COVID era video authority may be expiring, so it may
20 not be -- so, for example, you're trying in Boston, I can do
21 a sentencing in the afternoon. If we're in Worcester, I got
22 to come back to Boston and do the sentencing. It's not clear
23 I'll necessarily be able to do it by the time we try this by
24 video. Marginally it makes it a little easier in Boston, in
25 terms of scheduling from my perspective. But, you know,

1 that's -- you know, you make your own decisions about that.

2 Anything else?

3 MR. RITCHIE: No, Your Honor.

4 THE COURT: Okay. Thanks very much. Super
5 helpful. I really appreciate it. You have a great day, and
6 take care.

7 (Court in recess at 2:11 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 29th day of April, 2025.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR
Official Court Reporter